TAN BOON LIAT & CO. (S) PTE. LTD.

v.

THE ATTORNEY-GENERAL OF SINGAPORE

HIGH COURT, SINGAPORE
FA CHUA J
[SUIT NO. 2534 OF 1979]
4 APRIL 1989

LAND LAW: *Written permission for industrial development and subdivision - Sale of units - Whether within the written permission - Imposition of subsequent policy after written permission was granted.*

The plaintiffs are and were at all material times the legal owners of a large piece of land of approximately 173,960 square feet at Outram Road.

On 22 December 1971, the plaintiffs obtained the written permission of the Chief Planner, as competent authority under s. 9(1) of the Planning Act (Cap 279) (The Planning Act), for the 'industrial development' of their said land into a block of 15-storey flatted factory with offices and stores ("the building") (the 1971 written permission).

The plaintiffs commenced construction of the building shortly after permission was granted. In August 1973, the plaintiffs applied for and obtained an advertisement permit to advertise for the sale of the units in the building 'as factory, warehouses and offices etc.', in the local newspaper. The plaintiffs commenced selling the various units.

Upon completion of the building sometime in August 1976, many of the purchasers took possession of their units soon after the issue of the temporary occupation licence by the competent authority on 2 September 1976.

On 19 April 1977 the plaintiffs obtained the written permission of the Assistant Director, Building Control Division, as competent authority under s. 9(3) of the Planning Act for the subdivision of the building into 150 factory units so that several units may be sold separately to different purchasers (the 1977 written permission).

After 1977, the competent authority had a change of policy. The competent authority now requires that the use of the units in the building is permissible only if associated with or ancillary to the use thereof as light industry. The 1977 written permission made no mention of offices or stores.

On 6 July 1977, the assistant director, Development Control Division, informed the plaintiffs by letter that the 'existing/proposed' usage of certain units in the building for "store and office", 'office, showroom and store', "office, store and service room", was unauthorised and not permissible and the plaintiffs must ensure that prior approval was obtained from the competent authority before the property was put to "a non-conforming use".

On 18 July 1977, the certificate of fitness for occupation for all the units were issued by the competent authority - one certificate being issued for each of the fifteen floors in the building.

Differences of opinion as to proper interpretation of the 1971 and the 1977 written permission have arisen between the plaintiffs and the competent authority.

The plaintiffs now seek a declaration that on the proper construction of the 1971 and 1977 written permission, the plaintiffs are entitled to dispose of each of the said units for use as factory space or office space or storage space or for any combination of such uses separately and not ancillary or connected with any use of the unit as a factory.

Held:

[1] There is no ambiguity in the terms of the 1971 written permission. Given its natural meaning it is obvious that the developed project can be used for any of the usages specified: as factory, as office or as store; or a combination of these usages.

[2] On the competent authority seeking to impose its subsequent policy on the plaintiffs after the 1971 written permission was granted, the Planning Act does not give such powers to the competent authority to impose conditions after planning approval and the competent authority does not have such powers.

[3] The competent authority is estopped from denying that at the material time it has impliedly approved the use of office and stores separately in the building.

[Order accordingly.]

Legislation referred to:
Planning Act (Cap 279) [Sing], s. 9, (3), (3)(a), (5)

For the plaintiffs - Ronald Lee (Robert Wee with him)
For the defendants - Ter Kim Chan (Soh Tze Bian with him)

JUDGMENT

FA Chua J:

The plaintiffs are and were at all material times the legal owners of a large piece of land of approximately 173,960 square feet at Outram Road and known as Lots 422, 57^5, 7, 11, 12, 14, 15 Mukim I. At all material times, the land was zoned as general industry under the master plan.

On 22 December 1971, the plaintiffs obtained the written permission of the chief planner, as competent authority, under s. 9(1) of the Planning Act (Cap 279) (the Planning Act) for the "industrial development" of their said land into a block of 15-storey flatted factory with offices and store ("the building") (the 1971 written permission).

The 1971 written permission is in the following term:

> **The Competent Authority under s. 9(1) of the Planning Act (Cap 279, 1970 ED) grants:**
>
> Written permission for the use of the site edged red, for industrial development comprising the erection of the following:
>
> (i) a block of 15-storey flatted factory with offices and stores on the site coloured orange;
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> (ii) a canteen building on the site coloured pink;
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> (iii) a dust bin centre on the site coloured blue; and
>
> (iv) an electric sub-station on the site colored yellow.
>
> with provision for driveways, car parks, and loading/unloading bays and tree planting, on Lots 422, 57^5, 7, 11, 12, 14, 15 Mukim I at Outram Road, as depicted on plan (XX) in DC 116/40 subject to the following conditions:

(a) The total floor area of the building assessment of plot ratio purposes shall not exceed a plot ratio of 3 or 574,860 sq.ft." ctd

(b) The driveway and car parks, loading and unloading bays as indicated on the plan shall be constructed to the satisfaction of the competent authority upon completion of the building.

(c) Trees of a suitable specie shall be planted in the positions as indicated on the plan to the satisfaction of the competent authority.

The plaintiffs commenced construction of the building shortly after permission was granted. In August 1973, the plaintiffs applied for and obtained an advertisement from the building control division to advertise for the sale of the units in the building "as factory, warehouses and offices etc." in the local press. The plaintiffs commenced selling the various units in the building to purchasers soon after the commencement of construction.

On 1 August 1975, the assistant director, Development Control Division, wrote to the plaintiffs to remind them that the offices and stores as stated in the 1971 written permission were meant specifically as associated uses to the flatted factories and should not, therefore, be leased or rented out separately as offices or stores (AB42).

The plaintiffs completed construction of the building sometime in August 1976 (now called Tan Boon Liat Building). Many of the purchasers took possession of their units soon after the issue of the temporary occupation licence by the competent authority on 2 September 1976. On 18 July 1977, the certificate of fitness for occupation for all the units were issued by the competent authority - one certificate being issued for each of the fifteen floors of the building.

On 19 April 1977, the plaintiffs obtained the written permission of the assistant director, Building Control Division as competent authority under s. 9(1) of the Planning Act for the subdivision of the building into 150 factory units (of 10 units per floor) so that the several units may be sold separately to different purchasers. The said written permission is in the following terms:

The Competent Authority under s. 9(3) of the Planning Act (cap 279, 1970 Ed) grants:

Written permission (*inter alia*) for:

(II) Strata subdivision of the existing 15-storey flatted factory into" "150 separate factory units as follows:

Ground to 14 floors: 10 factory units on each floor (total 150 factory units)". (The 1977 written permission)

On 6 July 1977, the assistant director, Development Control Division, informed the plaintiffs by letter that the "existing/proposed" usage of certain units in the building for "store and office", "office, showroom and store", "office, store and service room" was unauthorised and not permissible and that the plaintiffs must ensure that prior approval was obtained from the competent authority before the property was put to "a non-conforming use" (AB59).

Differences of opinion as to the proper interpretation of the 1971 written permission and the 1977 written permission have arisen between the plaintiffs and the competent authority. The competent authority takes the view that as the 1971 written permission is in terms and in intent for light industry, any use of any part of the development for offices or stores is permissible only if associated with or ancillary to the use thereof as light industry. The plaintiffs on the other hand take the view that on the true and proper construction of the 1971 written permission (and the way in which each floor of the said building has been

subdivided into strata units) the building should be taken as a whole and that so long as the total number of factories, offices and stores within the building do not infringe the ratio or percentages indicated in the explanatory notes attached on the written permission they are acting well within four corners of the written permission.

The plaintiffs now seek the following declaration:

> A declaration that on the proper construction of a written permission granted on 22 December 1971 by the Chief Planner as competent authority under s. 9(1) of the Planning Act. (Cap. 279) and a further written permission granted on 19 April 1977 by the assistant director, Building Control Division as Competent Authority under s. 9(3) of the said Act relating respectively to the erection of a flatted factory with offices and stores ("the building") on Lots 422, 57[5], 7, 11, 12, 14, 15 Mukim I Outram Road and to the subdivision of the building into 150 units the plaintiffs are entitled to dispose of each of the said units for use as factory space or office space or storage space or for any combination of such purposes provided that the aggregate area of the building to be used for office space shall not exceed 20% of the building area (or 114,972 sq.ft.) and the area to be used as a store space shall not exceed 33 1/3% of the building area (or 191,620 sq.ft.).

The plaintiffs ask the Court to decide whether or not, on a true construction of the 1971 written permission and the 1977 written permission, the plaintiffs are entitled to dispose of each of the 150 units in the building for use as factory or office or storage or for any combination of such uses separately and not ancillary or connected with any use of the units as a factory.

Section 9 of the Planning Act imposes restriction upon the development or subdivision of land and no person can, without the written permission of the competent authority, develop any land (s. 9(1)). Before a person can subdivide any land he has to obtain the written permission of the competent authority (s. 9(3)(a)). The competent authority, when considering an application for written permission to develop or subdivide land, may grant permission either unconditionally or subject to such conditions as he considers fit (s. 9(5)).

In the present case the competent authority did in fact impose these conditions:

(a) The total floor area of the building for assessment of plot ratio purposes, shall not exceed a plot ratio of 3 or 574,860 sq.ft.

(b) The driveway and car parks, loading and unloading bays as indicated on the plan shall be constructed to the satisfaction of the competent authority upon completion of the building.

(c) Trees of a suitable specie shall be planted in the position as indicated on the plan to the satisfaction of the competent authority.

The events leading to the grant of the 1971 written permission are not in dispute. Between the period 1964 and 1971, there were four proposals submitted by the plaintiffs to develop the subject land and there were three written permissions granted under s. 9(1):

(1) In June 1964 (AB1) for the erection of "9 single-storey general industrial factory buildings with part 2-storey for offices on the 1st floor".

(2) In July 1968 (AB7) for the erection of 5 blocks of "4-storey flatted factories with offices".

(3) In October 1970 (AB18) for the erection of a "12-storey flatted factory" and a "12-storey flatted factory with offices on the 3rd, 7th and 11th floors".

On 27 November 1971, the plaintiffs submitted further revised plans for a 15-storey flatted factory with offices and stores instead of for two 12-storey buildings. The 1971 written permission was granted on 22 December 1971.

The written permission granted in July 1968 (AB7) was for five blocks of 4-storey flatted factories with offices. According to the plaintiffs they in fact proceeded work in late 1968 on the written permission AB7; but in December 1969, the Chief Planner directed the plaintiffs to temporarily suspend work because of a road scheme. Then the December 1970 written permission was granted for two blocks of 12-storey flatted factories. The written permission expresses in clear terms that three floors were to be used as offices.

The 1971 written permission was not the result of a conceptionally different proposal like the 1964, 1968 and 1970 written permission. The period between the application for planning approval on 27 November 1971, and the grant of the 1971 written permission was less than one month. This is significant compared to the periods in the cases of the 1964, 1968 and 1970 written permission: 2½ months in the case of the 1964 written permission; 14 months in the case of the 1968 written permission and 6 months in the case of the 1970 written permission. It would appear that the fourth proposal was only a minor variation from the third proposal. The October 1970 written permission did not lapse but was superseded by the 1971 written permission.

In my view the 1971 written permission should not be looked at in isolation but that it should be looked at together with the three written permission of June 1964, July 1968 and October 1970 and that the 1971 written permission should be read together with the October 1970 written permission for the purpose of forming a conclusion as to what was the intent of the 1971 written permission regarding the use of the building.

The explanatory notes (AB28) endorsed on the planning approval, which was part and parcel of the 1971 written permission, provided for 125 car parks for "office space", 34 lorry parks for "storage space" and the remainder 97 car parks for "factory". There was clear indication that the planning authority was expected to treat flatted factories, offices and stores as separate units rather than ancillary to each other. The allocation of the parking lots in the explanatory notes clearly shows that it was contemplated that the owner of a factory unit or a store unit or an office unit need not be one and the same person.

The planning authority therefore knew that the building was designed in such a way as to facilitate the use of factories, stores and offices separately.

AB 41 is the list of breakdown of the loading capacity on the various floors in the building. The loading capacity on the 1st to the 5th floors was designed to take a much heavier load of 350 ibs per square foot compared to the loading capacity from the 6th to the 15th floors of 150 ibs per square foot. The provision for a heavier loading capacity on the first floors envisaged the use of the 6th to the 15th floors as stores or offices.

Each floor of the building is subdivided into 10 units. On the 1st to the 6th floors there are two units of 1600 sq.ft., two units of 1640 sq.ft, two units of 2762 sq.ft., two units of 4145 sq.ft. and two units of 41316 sq.ft. (AB57).

On the 7th to the 15th floors there are two units of 1600 sq.ft., two units of 1640 sq.ft., one unit of 2930 sq.ft, one unit of 3098 sq.ft, two units of 4145 sq.ft and two units of 4316 sq.ft. (AB58).

The two units of only 1600 sq.ft. and the two units of only 1640 sq.ft. are clearly too small to accommodate a factory, office and store in one unit. Each of these small units is clearly intended to be used either as store or as office but certainly not a factory.

There is no ambiguity in the terms of the 1971 written permission. Given its natural meaning it is obvious that the developed project can be used for any of the usages specified: as factory, as office or as store; or a combination of these usages. It is to be noted that none of the three conditions imposed pursuant to s. 9(5) relates to the restrictive use of factory, office and store as interpreted by the defendant.

It appears to me that the competent authority had impliedly approved the use of office or store separately in building. The competent authority's desire to impose restrictions on such uses was an afterthought. It was only in August 1975, after almost four years from the date of the 1971 written permission, that the competent authority made reference to the 1971 written permission in these terms: "to remind you that the offices and stores as stated in the written permission are meant specifically as associated uses to the flatted factory and should not, therefore, be leased or rented out separately as offices or stores". (AB42).

The plaintiffs drew the Court's attention to two written permission granted by the competent authority under the Planning Act (Cap 279, 1970 Edn.): in November 1973 to Golden Wall Realty Ltd. in respect of land in Jalan Rajah for "Proposed flatted factory and Housing Development" (AB86) and in May 1974 to New Method Development (Pte) Ltd. in respect of land a Hindhede Drive for an "erection of a 5-storey factory building with a canteen on the roof" (AB90). It is to be noted that the words "with office and store" were not used.

The plaintiffs cite an instance where in 1976 the competent authority described the planning approval granted for a site as "**For a block of 15-storey flatted factory with offices and stores**" (AB47) and the same site was later described in 1977 as "15-storey flatted factory" (AB49) and in 1978 as "approved for a separate factory unit" (AB79).

It would appear that after 1977 the competent authority had a change of policy. The competent authority now requires that the use of a unit in the building is permissible only if associated with or ancillary to the use thereof as light industry. The 1977 written permission made no mention of offices or stores.

The competent authority has a duty under s. 9(5) of the Planning Act to impose restrictive conditions as to use as it thought fit. The defendant concedes that the competent authority cannot impose conditions relating to use at the sub-division stage under s. 9(3) of the Planning Act and is relying on the 1977 written permission to impose any conditions. The 1971 written permission was for "a block of 15-storey flatted factory with offices and stores on the site coloured orange". There is nothing in the 1971 written permission to indicate (1) that certain floors are to be used exclusively as flatted factories and others are to be used as offices and stores only; (2) that the use of the offices and stores are to be ancillary to the flatted factories; (3) that a purchaser of a flatted factory unit must also purchase an office or a store unit at the same time.

It seems to me clear from the 1971 written permission that the offices and stores were never intended to be sold as ancillary unit to the flatted factories. There was no restriction or condition imposed that each flatted factory unit must be sold together with an office and a store unit adjoining it. A manufacturer may want to purchase only a factory unit in the building and have his office and/or store elsewhere. 125 car parks were allotted for the use of owners of office units and 34 lorry parks were allotted for the use of the owners of store

units and 97 car parks for the use of the owners of factory units. Such separate allotments can only be interpreted to mean that it was not intended that a factory unit and an office unit and a store unit must be in one and the same ownership.

The licence granted to the plaintiffs on 17 August 1973, under the Local Government (Advertisement) Regulations 1966, by the Building Control Division (AB29) licensed the plaintiffs to advertise: "Tan Boon Liat Bldg. Factory, Warehouses & Offices Etc.". The plaintiffs acted on the competent authority's representation and had sold many of the units purely for office use or for storage use or for office/storage use.

The defendant submits that in construing a written permission one must consider the statutory background under which the written permission is granted; that the competent authority in granting written permissions must be taken to be well aware of the relevant provisions in the Planning Act, Master Plan 1970 written statement, Use Classes Rules 1960 and so must the members of all professions who deal with planning matters. The defendant submits that the plaintiffs' interpretation of the 1971 written agreement is against the purport of that written permission read with the Master Plan 1970 written statement, the Use Classes Rules 1960 and against good town planning practice and/or policy.

The process of planning control under the Planning Act does not begin after the grant of written permission. It begins before it and power is given to the competent authority under s. 9(5) to impose conditions to ensure that the application for planning approval complies with the master plan. The duty is on the competent authority to impose conditions and if the use of the office and store separately is against the master plan, there is no reason why the developer should be penalised.

In the present case the competent authority now seeks to impose its subsequent policy on the plaintiffs after the 1971 written permission was granted. The Planning Act does not give such power to the competent authority to impose conditions after planning approval and the competent authority does not have such powers. However, the competent authority is estopped from denying that at the material time it has impliedly approved the use of office and stores separately in the building.

There will be an order in terms of the declaration which the plaintiffs seek. The defendant to pay costs to the plaintiffs.

Also found at [1990] 1 CLJ 200